

## SENATE BILL NO. 427

INTRODUCED BY LASLOVICH

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING THE MONTANA CONTAMINATED PROPERTY COMPENSATION AND RESTORATION ACT; REVISING DAMAGES AWARDED FOR CONTAMINATION OF REAL PROPERTY; DEFINING "RESTORATION DAMAGES" AND "SPECIAL USE PROPERTY"; ESTABLISHING PROVISIONS FOR EVIDENCE AND BURDEN OF PROOF FOR A COMMON LAW CLAIM FOR CONTAMINATION OF REAL SPECIAL USE PROPERTY; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION.** **Section 1. Short title -- SCOPE.** (1) [Sections 1 through 6] may be cited as the "Montana Contaminated Property Compensation and Restoration Act".

(2) [SECTIONS 1 THROUGH 6] APPLY ONLY TO COMMON LAW CLAIMS BROUGHT IN JUDICIAL PROCEEDINGS ON BEHALF OF PRIVATE INTERESTS OF INDIVIDUALS OR ENTITIES.

**NEW SECTION.** **Section 2. Definitions.** For purposes of [sections 1 through 6], the following definitions apply:

(1) "Department" means the department of environmental quality provided for in 2-15-3501.

(2) (A) "RELEASE" MEANS ANY SPILLING, LEAKING, EMITTING, DISCHARGING, ESCAPING, LEACHING, OR DISPOSING OF PETROLEUM OR PETROLEUM PRODUCTS FROM A PETROLEUM STORAGE TANK INTO GROUND WATER, SURFACE WATER, SURFACE SOILS, OR SUBSURFACE SOILS THAT OCCURRED FROM A PETROLEUM STORAGE TANK, AS DEFINED IN 75-11-302.

(B) THE TERM DOES NOT INCLUDE A RELEASE FROM THE FOLLOWING PETROLEUM STORAGE TANKS:

(I) A TANK LOCATED AT A REFINERY OR A TERMINAL OF A REFINER;

(II) A TANK LOCATED AT AN OIL AND GAS PRODUCTION FACILITY; OR

(III) A TANK THAT IS OR WAS PREVIOUSLY UNDER THE OWNERSHIP OR CONTROL OF A RAILROAD, EXCEPT FOR A TANK THAT WAS OPERATED BY A LESSEE OF A RAILROAD IN THE COURSE OF NONRAILROAD OPERATIONS.

(2)(3) "Restoration damages" means the amount of compensation determined necessary by a trier of fact to restore a contaminated special use property to its function and use prior to the contamination upon which

a common law claim is based. THE TERM INCLUDES REASONABLE ATTORNEY FEES AND COSTS INCURRED BY THE PLAINTIFF.

~~(3)~~(4) "Special use property" means real property CONTAMINATED BY A RELEASE FROM A PETROLEUM STORAGE TANK, AS DEFINED IN 75-11-302, that is found by a trier of fact to have personal value to the plaintiff not reflected in the market value of the property or to have unique public, historic, cultural, or religious value not reflected in the market value of the property.

NEW SECTION. Section 3. Damages RESTORATION DAMAGES for contamination of real SPECIAL USE property. ~~(1) Except as provided in subsection (2), an award of damages for a common law claim alleging contamination of real property must be based on the diminution of the market value of that property as a result of that contamination. Damages awarded pursuant to this section may not exceed the market value of that property in the absence of the contamination upon which the common law claim is based.~~

~~(2)~~(1) Restoration damages for a common law claim alleging contamination of special use property may be granted by the trier of fact AND MAY ONLY BE OBTAINED PURSUANT TO [SECTIONS 1 THROUGH 6].

~~(3)~~(2) Nothing in this section precludes the award of OTHER damages ~~for loss of use of the property~~ ALLOWED UNDER COMMON LAW AND STATUTE.

NEW SECTION. Section 4. Use of restoration damages -- request for trust account. (1) Restoration damages awarded pursuant to ~~[section 3(2)]~~ may [SECTION 3], EXCLUSIVE OF DAMAGES AWARDED FOR ATTORNEY FEES AND COSTS, MUST be used ~~only~~ to conduct any remedial and corrective action necessary to restore the special use property for which the damages were awarded to its function and use prior to the contamination for which the damages were awarded.

(2) Any party may request that a court awarding restoration damages may also order that those damages be deposited in a segregated trust account at a commercial bank or trust company to ensure compliance with subsection (1). THE PLAINTIFF MAY CREATE A TRUST TO BE OVERSEEN BY A QUALIFIED PROFESSIONAL TO RESTORE THE SPECIAL USE PROPERTY.

NEW SECTION. Section 5. Evidence of state or federal remedial or corrective action. In an action for RESTORATION damages for contamination of ~~real~~ SPECIAL USE property, any party may introduce evidence of any remedial or corrective action taken ~~or to be taken at or having an effect on~~ AT OR ORDERED FOR that ~~real~~

1 SPECIAL USE property by:

2 (1) the department or persons acting pursuant to Title 75, CHAPTER 11; or

3 (2) the United States environmental protection agency or persons acting pursuant to ~~the Comprehensive~~  
4 ~~Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, et seq., or the Resource~~  
5 ~~Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et seq.~~

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7 **NEW SECTION. Section 6. Burden of proof.** The plaintiff in an action for RESTORATION damages  
8 resulting from the contamination of ~~real~~ SPECIAL USE property has the burden of proof to show:

9 ~~—— (1) diminution of market value for the real property alleged to have been contaminated by the defendant~~  
10 ~~as a result of the contamination;~~

11 ~~—— (2) that a property meets the definition of a special use property if the plaintiff intends to seek restoration~~  
12 ~~damages for the alleged contamination from the defendant; and~~

13 ~~—— (3) that, following completion by any party of any remedial or corrective action approved by the~~  
14 ~~department or the United States environmental protection agency in response to the contamination of the real~~  
15 ~~property upon which a common law claim for damages is based, the market value of the property is or will be~~  
16 ~~diminished because of the contamination.~~

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18 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 through 6] are intended to be codified  
19 as an integral part of Title 75, chapter 4 11, and the provisions of Title 75, chapter 4 11, apply to [sections 1  
20 through 6].

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22 **NEW SECTION. SECTION 8. NONSEVERABILITY.** IT IS THE INTENT OF THE LEGISLATURE THAT EACH PART OF  
23 [THIS ACT] IS ESSENTIALLY DEPENDENT UPON EVERY OTHER PART, AND IF ONE PART IS HELD UNCONSTITUTIONAL OR  
24 INVALID, ALL OTHER PARTS ARE INVALID.

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26 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.

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28 **NEW SECTION. Section 10. Applicability.** [This act] applies to judicial proceedings begun on or after  
29 [the effective date of this act].

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